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MAR 03 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 3, 2000

Via Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St., S.W., Room TW-B204
Washington, D.C. 20554

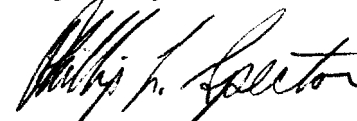
Re: Written *Ex Parte* Communication in
ET Docket No. 98-206, RM-9147, and RM-9245

Dear Ms. Salas:

On behalf of SkyBridge L.L.C. and the other entities that are signatories to the attached letter, and in accordance with 47 C.F.R. § 1.1206, we hereby transmit for inclusion in the public record a written *ex parte* communication that was submitted to Chairman William E. Kennard, with copies provided to the other Members of the Commission, on February 28, 2000.

We apologize for the delay in submitting this letter. If there are any questions, please contact the undersigned.

Respectfully submitted,



Phillip L. Spector
Attorney for SkyBridge L.L.C.

Attachment

EX PARTE OR LATE FILED

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*NOT AN ACTIVE MEMBER OF THE DC BAR
**ADMITTED IN FRANCE ONLY.

SATELLITE BROADCASTING AND



COMMUNICATIONS ASSOCIATION

February 28, 2000

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Kennard:

The Satellite Broadcasting and Communications Association ("SBCA"), the entire satellite television industry and the undersigned applicants for emerging non-geostationary fixed satellite service ("NGSO FSS") networks, wish to express their deep concern regarding the proposal to allow Northpoint Technology, Ltd. to operate in the 12.2-12.7 GHz band. That band has long been allocated by the Federal Communications Commission and the International Telecommunication Union (ITU) for Direct Broadcast Satellite ("DBS") services. More than two years ago the ITU voted to allow NGSO FSS systems to operate in that band under certain well defined circumstances, and launched a sweeping international study process to determine the technical standards that would govern such operations. At the request of SkyBridge, the Federal Communications Commission has launched a related domestic allocation rulemaking proceeding. The undersigned parties are convinced that adding Northpoint-type services to the band would result in ruinous interference and serious disruption of services to consumers of both DBS and NGSO FSS services.

The DBS industry has done technical analyses that demonstrate conclusively that Northpoint's proposed terrestrial point-to-multipoint system would disrupt service to the more than 11 million U.S. consumers the satellite television industry currently serves and to many of the millions more it hopes to serve in the near future. Further, a recent demonstration performed by Northpoint confirms that satellite television consumers will experience harmful interference if Northpoint's proposed service is allowed to share the DBS frequencies. This interference was observable despite the fact that the Northpoint demonstration was designed and implemented in a manner that minimized measurable interference caused by the demonstration.

After two years of hard work, Congress recently passed the Satellite Home Viewer Improvement Act ("SHVIA"), legislation that promises to provide many consumers with increased competition to cable and a real opportunity to constrain skyrocketing cable rates. It would be ironic, to say the least, if the Commission allowed interference from Northpoint to

deprive consumers of the increased choice and competition that passage of SHVIA has enabled DBS operators to provide.

The interference caused by Northpoint's proposed service is not limited to the United States. For example, if Northpoint is authorized to share the 12.2-12.7 GHz band within the United States, interference is likely to be caused to DBS services in neighboring countries. For instance, should Northpoint transmitters be authorized to operate in border areas such as the Detroit metropolitan area, service to thousands of Canadian consumers served by Telesat Canada's satellites operating in the band could be affected by interference. Similar problems could exist with respect to Northpoint operations near the Mexican border.

In addition, consumers will be further harmed because Northpoint's proposed system would interfere with NGSO FSS networks that are planning to operate on a global basis. Northpoint's own technical analyses shows that its proposed service will cause harmful interference to NGSO FSS systems and would prevent them from serving consumers in Northpoint's service areas.

With regard to the NGSO FSS networks, as shown in analyses provided to the Commission and its staff, Northpoint's transmitters would create large exclusion zones in which NGSO FSS systems would be unable to serve consumers. Northpoint continues to suggest that interference mitigation techniques might be available (Northpoint's mitigation proposal would place the entire technical and financial burden on NGSO systems with no burden assumed by Northpoint). However, the NGSO FSS applicants have reviewed Northpoint's proposed solutions and have found them to be wholly inadequate and prohibitively expensive. The restrictions on NGSO FSS operations imposed by Northpoint would diminish the availability of the new and innovative satellite services that will be made possible by NGSO FSS systems, to the detriment of the American consumers, particularly those living in rural areas.

During the past three years, NGSO FSS applicants, GSO FSS and DBS operators, and existing terrestrial service providers have invested millions of dollars and countless hours in complex technical studies and difficult international negotiations concerning the introduction of new services in this frequency band, which is already heavily used. The goal has been to find strict operating limits and reliable regulatory enforcement procedures that would allow NGSO FSS systems to deploy in a manner that minimizes interference to important services already being provided by incumbent operators. Although some important matters remain unresolved, these ongoing efforts have resulted in much progress. Northpoint has not participated in these discussions and has failed to provide anything more than a superficial sharing plan based on questionable and conflicting technical data. It would be astonishing for the Commission to now undermine the hard fought and delicate results of these three years of work by introducing a new source of interference into the subject band.

The undersigned believe that more rigorous technical analyses are needed before the Commission can reach an informed conclusion about the extent of Northpoint's interference into DBS and NGSO FSS networks, and the resulting impact on consumers. Northpoint should be required to undergo the same rigorous technical sharing analysis that NGSO FSS applicants have been required to undergo before the Commission even considers allowing it into the 12.2-12.7 GHz band. Moreover, Northpoint should be required to achieve a consensus with DBS and NGSO FSS systems on a mutually agreeable sharing regime, should that prove to be possible technically, before any further Commission action is taken on the Northpoint allocation request.

On February 9, the Commission granted DBS operators DIRECTV, Inc. and EchoStar Satellite Corporation, a six month Special Temporary Authorization (STA) to conduct a test of Northpoint's technical claims. We urge the Commission to withhold consideration of the Northpoint proposal until it has the benefit of the new, and we believe far more reliable information that will result from the testing.

It should be pointed out that Northpoint has refused to provide EchoStar and DIRECTV with a Northpoint transmitter for use during the imminent testing. This will, of course, delay the start of the EchoStar/DIRECTV testing while a transmitter is being fabricated. If the Commission is interested in resolving the question of interference in a more expeditious manner, it should direct that independent testing be undertaken, under an agreed upon protocol and with the participation of all the interested parties, including Northpoint. We urge the Commission to do so and pledge our cooperation. We are confident that such independent testing could be completed in a relatively short time frame.

The DBS and NGSO FSS industries have invested billions of dollars to ensure consumers receive the highest caliber and most reliable service possible. Consumers and these industries are depending on the Commission to resolve the following issues before it even considers granting the Northpoint proposal: 1) the demonstrated harmful interference to DBS subscribers both inside and outside the United States; 2) the demonstrated harmful interference to NGSO FSS services, 3) the international implications of a decision that would undermine the agreement on NGSO/GSO/FS spectrum sharing that the United States endorsed at the recent ITU Conference Preparatory Meeting. These are extremely important technical and policy issues that will require the Commission's most diligent analysis and attention supported by the best and most reliable information the Commission can amass.

Sincerely,

Satellite Broadcasting and Communications Association
SkyBridge Communications, LLC
The Boeing Company
DIRECTV, Inc
EchoStar Communications Corporation
Galaxy Latin America, LLC
GE Americom
Loral Space and Communications
PanAmSat Corporation
Pegasus Communications Corporation

cc:

Commissioner Harold W. Furchtott-Roth
Commissioner Susan Ness
Commissioner Michael K. Powell
Commissioner Gloria Tristani